

115-115-115  
OCT 4 1993

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

COHEN & BERFIELD

In re Applications of

DOCKET FILE COPY ORIGINAL  
MM DOCKET NO. 93-75

TRINITY BROADCASTING OF  
FLORIDA, INC.

File No. BRCT-911001LY

For Renewal of License of  
Station WHFT(TV) on  
Channel 45, Miami, Florida:  
and

COPY

GLENDAL E BROADCASTING  
COMPANY

File No. BPCT-911227KE

For a Construction Permit  
for a New Commercial TV  
Station to operate on  
Channel 45, Miami, Florida:

Deposition of: EDWARD RICK, III

Taken by : LEWIS I. COHEN, ESQUIRE

Before : Alfred W. Kershaw, RPR  
Official Court Reporter

Beginning : Friday, September 10, 1993  
2:00 p.m.

Place : Hearing Room 221  
Lancaster County Courthouse  
Lancaster, Pennsylvania

COUNSEL PRESENT:

MULLIN, RHYNE, EMMONS & TOPEL  
1000 Connecticut Avenue Suite 500  
Washington, D.C., 20036

BY: NATHANIEL F. EMMONS, ESQUIRE

Appearing for Trinity Broadcasting  
of Florida, Inc.

Federal Communications Commission	
Docket No. 49375	14 Sept 1953 TWP/6/enc 6
Presented by: Emersons TBP	
Disposition	12.2.93
Reported	12.2.93
Date	12.2.93

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COHEN & BERFIELD, P.C.  
Board of Trade Building  
1129 20th Street N.W.  
Washington, D.C. 20036  
BY: LEWIS I. COHEN, ESQUIRE  
Appearing for Glendale Broadcasting  
Company

JAMES W. SHOOK, ESQUIRE  
Federal Communications Commission  
Mass Media Bureau  
Washington, D.C. 20554  
Appearing for the FCC

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COUNTY OF LANCASTER

:

SS

COMMONWEALTH OF PENNSYLVANIA:

I, ALFRED W. KERSHAW, the undersigned  
Commissioner, do hereby certify that there appeared  
before me, EDWARD RICK, III, the witness, being  
duly sworn to testify the truth, the whole truth, and  
nothing but the truth, in answer to the oral questions  
propounded to him by the attorneys for the respective  
parties as set forth in the following deposition.

I further certify that before the taking of  
said deposition, the above witness was duly sworn, that  
the questions and answers were taken down  
stenographically by said Alfred W. Kershaw, Official  
Court Reporter, Lancaster, Pennsylvania, approved and  
agreed to, and afterwards reduced to print by means of  
computer-assisted transcription under the direction of  
said Reporter.

In testimony whereof, I have hereunto  
subscribed my hand this 28<sup>th</sup> day of September, 1993.

Alfred W. Kershaw

Alfred W. Kershaw

Reporter-Commissioner

1 P R O C E E D I N G S

2  
3 (Whereupon, at or about 2:00 p.m., the  
4 following proceedings transpired:)

5  
6 (Whereupon, it was stipulated that the  
7 original of the deposition would be mailed to Mr.  
8 Rick for reading and signing by the witness; that  
9 the original would then be returned to the Court  
10 Reporter for subsequent filing, with two copies, to  
11 the FCC.)

12  
13 EDWARD RICK, III, called as a witness,  
14 being duly sworn or affirmed, was examined and  
15 testified as follows:

16 EXAMINATION

17 BY MR. COHEN:

18 Q. Would you identify yourself, please,  
19 sir?

20 A. Yes, I'm Edward Rick, III.

21 Q. What's your residence address?

22 A. 125 Dunharrow Drive, Lancaster,  
23 Pennsylvania.

24 MR. COHEN: I think we should note the  
25 appearance of counsel.

1                   My name is Lewis Cohen, and I represent  
2                   Glendale Broadcasting Company.

3                   MR. EMMONS: I'm Nathaniel F. Emmons  
4                   representing Trinity Broadcasting of Florida, Inc.

5                   MR. SHOOK: And I am James Shook  
6                   representing the Chief, Mass Media Bureau.

7                   MR. COHEN: Mr. Rick, I believe the FCC  
8                   rules require me to do this.

9                   I would like you to mark the subpoena  
10                  and the service therein as Rick deposition exhibit  
11                  number one, Mr. Reporter.

12                  (Whereupon, the Court Reporter marked  
13                  for identification as Deposition Exhibit Rick one,  
14                  a subpoena.)

15                  BY MR. COHEN:

16                  Q.       Mr. Rick, have you ever testified  
17                  before, sir?

18                  A.       Testified before?

19                  Q.       Have you ever testified in any court  
20                  proceeding before?

21                  A.       Yes, sir.

22                  Q.       Have you ever been deposed before?

23                  A.       No, sir.

24                  Q.       I want you to know that I want to try,  
25                  to the best of my ability, to ask you questions



1       that are clear.

2               If there is anything that I ask you  
3       that's not clear, tell me, and I will try to make  
4       it clear.

5               If, during the course of your answers,  
6       you want to amend, change, delete, strike,  
7       whatever, any answer you give, please tell me.

8               I want to give you every opportunity to  
9       state what the facts are in response to my  
10      questions, so feel free to avail yourself of what I  
11      just said.

12           A.       All right, sir.

13           Q.       Now, you received a subpoena, I take  
14      it, Mr. Rick?

15           A.       Yes, sir.

16           Q.       And that was what's called the subpoena  
17      duces tecum, which called for the provision of  
18      certain documents?

19           A.       (Indicates yes.)

20           Q.       Did you bring any documents with you?

21           A.       I brought all that I had pertaining to  
22      this.

23           Q.       Could I look at your file?

24           A.       The only documents that I had out of my  
25      file pertaining to this case, other than messages

1 back and forth, are those two pieces right there.

2 Q. Let's see now. You say the only  
3 documents other than what, sir?

4 A. Well, communication between their law  
5 firm and myself.

6 Q. I'd like to see those.

7 A. Well, here you are.

8 MR. COHEN: Could I just have a minute  
9 to review those documents? I'm not going to be  
10 long.

11 (Whereupon, there was a brief recess in  
12 the proceedings.)

13 BY MR. COHEN:

14 Q. Okay, I'm ready to proceed. There are  
15 three documents I want to mark as deposition  
16 exhibits, these three documents, Mr. Reporter.

17 These are your only copies, I take it?  
18 Is this your only copy of this document?

19 A. Yes.

20 Q. Well, shall we make a copy of it for  
21 you then?

22 A. That's fine. I don't care.

23 Q. You don't want to give up possession of  
24 this document without a copy?

25 A. No.

1 Q. I am correct.

2 Here's what I want to make deposition  
3 exhibits, these three documents.

4 (Whereupon, there was a brief recess in  
5 the proceedings.)

6 (Whereupon, the proceedings resumed as  
7 follows:)

8 BY MR. COHEN:

9 Q. While the documents are being  
10 reproduced, I would like to move ahead.

11 Now, concerning your deposition, have  
12 you spoken to anyone about your deposition?

13 A. Have I spoken to anyone about it?

14 Q. Anyone, yes.

15 A. I have spoken on a couple occasions  
16 with Mr. Holt.

17 Q. Okay. Is he the only lawyer you have  
18 spoken to?

19 A. Other than, I believe you, sir, on the  
20 phone at one time.

21 Q. I called you to advise you that you  
22 were going to be deposed?

23 A. Be subpoenaed, and that's the only  
24 thing. Yes, those are the only two people.

25 Q. And how recently did you speak with Mr.

1 Holt about your deposition?

2 A. Well, I'll tell you what, it was  
3 Wednesday, and that was just merely to confirm --

4 Q. Today is Friday.

5 A. Today is Friday. It was Wednesday. I  
6 came back from vacation on Tuesday, and I was to  
7 call him and just: See you Friday. That was it.

8 Q. How long was that conversation?

9 A. Oh, three, four minutes.

10 Q. Did you talk about the questions that  
11 you might be asked, or the answers you might be  
12 giving, during that conversation?

13 A. No, sir.

14 Q. Did there ever come a time that you  
15 talked with Mr. Holt about the questions you might  
16 be asked or the answers you might give?

17 A. No, sir. I think it was just that I  
18 would be questioned by one side, and then he would  
19 have some questions.

20 Q. That's what he said to you on  
21 Wednesday?

22 A. As I recall, yes.

23 Q. Did you have a conversation previous to  
24 that conversation with Mr. Holt about this  
25 deposition? I'm now talking about any conversation

1 prior to the one you held on Wednesday.

2 A. About it? We had conversations, yes.

3 That, after I got the subpoena, I  
4 informed him that I had been subpoenaed, and we  
5 probably held two, three conversations.

6 Q. And were the parties to that  
7 conversation you and Mr. Holt?

8 A. Yes.

9 Q. Anyone else?

10 A. No.

11 Q. And you say two or three of them. Are  
12 they clear in your mind, those conversations?

13 A. Not really.

14 Q. Can you give me the substance of what  
15 you recall about those conversations?

16 A. The first one was merely just informing  
17 him that I had been subpoenaed, and he said that --  
18 Yes, I believe he said he was aware of it through  
19 your firm or -- and that he -- either, or one of  
20 his partners would be here when the deposition was  
21 taken.

22 That's really about it.

23 Q. Did you ever have any conversation with  
24 Mr. Holt concerning the questions you might be  
25 asked and the answers you might give? Ever?

1           A.       No, sir. Not that I can recall, no.  
2 Not what the questions might be and what the --

3           Q.       Did you ever have any conversation with  
4 Mr. Holt about the nature of a deposition, what it  
5 was like?

6           A.       The nature of a deposition?

7           Q.       Yes.

8           A.       I would say probably, yes. He  
9 explained to me that there would be a recorder  
10 there and that your side would ask questions, and  
11 their side would ask questions, and that was it.

12          Q.       And when did that conversation take  
13 place?

14          A.       I don't know, sir.

15          Q.       Did you speak with Mr. Holt yesterday?

16          A.       No, sir. I don't think, no.

17          Q.       I beg your pardon.

18          A.       No. Yesterday -- No, sir.

19          Q.       Did you speak with anyone else from Mr.  
20 Holt's law firm?

21          A.       No, sir.

22          Q.       What about Thursday? Today is Friday;  
23 yesterday was Thursday, and then the preceding date  
24 you had that brief conversation you just described?

25          A.       That's correct.

1 Q. Do you know a person named George  
2 Gardner?

3 A. No, sir. Well, yes. I just met him.  
4 I believe that is George Gardner.

5 Q. That's David Gardner.

6 A. Do I know George Gardner? No, sir, I  
7 don't.

8 Q. And I take it you have never been  
9 contacted by anyone who identified himself as  
10 George Gardner?

11 A. To my knowledge, no, sir.

12 Q. Have you ever seen this gentleman to my  
13 right, whose name is David Gardner, before today?

14 A. Not to my knowledge. No, sir.

15 Q. Are you aware that David Gardner and  
16 George Gardner's deposition were taken earlier this  
17 week?

18 A. No, sir.

19 Q. No one told you that?

20 A. No, sir.

21 Q. This is the first time you have heard  
22 of that?

23 A. Yes, sir.

24 Q. Now, I really don't have the documents  
25 yet, but I'll go forward, and I guess we will have

1 to fill in.

2 Among the documents that are being  
3 xeroxed -- I'm now relying on my recollection; I  
4 just looked at them briefly -- were some drafts, I  
5 believe, of the affidavit of Edward Rick, III.

6 And I want to mark as a deposition  
7 exhibit the affidavit of Edward Rick, III.

8 (Whereupon, the Court Reporter marked  
9 for identification as Deposition Exhibit Rick two,  
10 an affidavit.)

11 BY MR. COHEN:

12 Q. And this document is no surprise to  
13 you, Mr. Rick. You have seen it probably more  
14 times than you wish.

15 And I suspect you will be seeing it a  
16 lot more than you wish.

17 And would you look at that affidavit?  
18 And on page six, that's your signature, is it not?

19 A. Yes, sir.

20 Q. And you signed that in front of -- Am I  
21 correct, did you sign that in front of that notary,  
22 Melanie Allen?

23 A. Yes, sir.

24 Q. And who was present when you signed  
25 that, if you can recall?



1           A.       I can not recall. It was in an office  
2 in a quarry and I have no idea who was in the  
3 office at that time, at Binkley and Ober Quarry.

4           Q.       I would like you to walk me through, if  
5 you will -- The quickest way to do this is for you  
6 to tell me how it came about that you executed this  
7 affidavit.

8                   Can you start at the top and walk me  
9 through it?

10          A.       Do you want me to start at the top of  
11 this, or the time that -- the first time that a Mr.  
12 Daly came into the office?

13          Q.       Not the first time Daly came in. I  
14 want you to tell me how it came about that this  
15 affidavit, your affidavit was prepared. That's  
16 what I want you to tell me about.

17          A.       I was contacted by their law firm.

18          Q.       When were you contacted?

19          A.       I honestly don't remember, sir.

20          Q.       Well --

21          A.       As far as the date is concerned, I do  
22 not remember.

23          Q.       I think you will probably be helped by  
24 the drafts we're going to get, so let's leave that  
25 for a moment. Who contacted you?

1           A.       Mr. Holt.

2           Q.       And did he identify himself?

3           A.       Yes, sir.

4           Q.       What did he say to you?

5           A.       He was an attorney from Washington,

6           D.C.

7                    I wasn't sure who he was representing.

8           It involved this --

9           Q.       Did he tell you who he was

10          representing?

11          A.       I'm sure he did, sir. It didn't mean

12          anything to me at the time.

13          Q.       Do you recall what he told you?

14          A.       No, sir, I don't.

15          Q.       You have no recollection?

16          A.       No, sir, I don't.

17          Q.       Could you recall him using the words,

18          Trinity Broadcasting Company?

19          A.       I do not recall who he said he was

20          representing at that point in time.

21          Q.       But he did tell you he was representing

22          one of the parties to this proceeding?

23          A.       I'm sure he did. Yes, sir.

24          Q.       Did he tell you what this proceeding

25          was all about?

1           A.       No, sir. It was about their television  
2 antenna.

3           MR. COHEN: We will mark the Ready  
4 Mixed Concrete Company employees by seniority as  
5 deposition exhibit Rick three.

6           THE WITNESS: How did that get in here?  
7 That is not relevant to this case.

8           MR. COHEN: I believe it is, sir, and I  
9 was going to ask you questions about it.

10          THE WITNESS: I'm sorry.

11          MR. COHEN: Rick deposition exhibit  
12 three is a five-page document, but the pages are  
13 not seriatim.

14                 Rick deposition exhibit four is a  
15 document with a cover page and is seventeen pages.  
16 The cover page is on the facsimile transmittal  
17 letterhead of Mullin, Rhyne, Emmons and Topel dated  
18 April 15, 1993.

19                 Rick deposition exhibit five is a  
20 document also on the facsimile transmittal  
21 letterhead of Mullin, Rhyne dated April 16, 1993,  
22 and it consists of eight pages.

23                 (Whereupon, the Court Reporter marked  
24 for identification as deposition exhibits Rick  
25 three, four, and five, various documents.)

1 BY MR. COHEN:

2 Q. Okay, let's go back, Mr. Rick, so --

3 Can I have that correspondence? It will help me

4 move faster.

5 MR. EMMONS: Yes, which?

6 MR. COHEN: The ones that are part of

7 the package that Mr. Rick gave me that I gave you.

8 MR. EMMONS: I thought I gave it back

9 to you.

10 MR. COHEN: I think I can move this

11 along faster.

12 BY MR. COHEN:

13 Q. What I am trying to do, Mr. Rick, is to

14 move quickly to try to get at some documents to

15 help you refresh your recollection as to when you

16 were first contacted by Mr. Holt.

17 A. Okay.

18 Q. According to the documents that I have

19 here, on April -- date of April 15 you got a fax

20 from Mr. Holt. Let me show that to you.

21 A. Okay, that one I have a copy of.

22 That's the only one that I have a copy of.

23 Q. And he states in there that he is

24 enclosing a draft of the statement that I believe

25 incorporates the facts you related to me yesterday.

1                   Now, using this document, this date as  
2 a correspondence, give me your best recollection of  
3 when you first heard from Mr. Holt.

4           A.       I'm sorry, I can't really tell you a  
5 date.

6           Q.       Give me your best recollection.

7           A.       You know, a month before that,  
8 something like that. I don't know.

9           Q.       That was a phone call from him, I take  
10 it?

11          A.       Yes, sir.

12          Q.       And we were talking about this, and I  
13 was asking you -- Did he identify himself?

14          A.       Yes, sir.

15          Q.       And I want your best recollection of  
16 how he identified himself.

17          A.       My best recollection, he identified  
18 himself as Chris Holt representing a law firm of  
19 such and such in Washington, D.C., and it pertained  
20 to a TV tower. Who he was representing, I don't  
21 know. I don't recall who he said.

22                   I am sure that he would have said who  
23 he was representing. It did not mean anything to  
24 me because I didn't know one party or another.

25          Q.       Did he tell you that his client was

1 Trinity Broadcasting Company?

2 A. I do not recall, sir. I cannot say for  
3 sure.

4 Q. Do you recall if he told you that his  
5 client was an applicant for renewal of a television  
6 license in Miami, Florida, and that Glendale  
7 Broadcasting Company, which is owned by George  
8 Gardner, was a competing applicant?

9 A. I don't recall that at all, sir.

10 Q. You don't recall that?

11 A. No. One way or another, I do not.

12 Q. Is that the first time you have ever  
13 heard what I just told you?

14 A. I would say that; no. I would assume  
15 that there is the problem there after reading  
16 what's going on here. But that --

17 Q. You say you have assumed. My question  
18 is a simple one. Do you recall Mr. Holt ever  
19 telling you what I have just told you?

20 A. I don't recall it, sir, no.

21 Q. As the first time that you are aware  
22 that you are being deposed in a proceeding  
23 concerning an application for a new television  
24 station in Miami against an applicant for renewal  
25 of license in Miami, is that the first time you

1 know of that?

2 A. Stated as such, it is the first time I  
3 know of that.

4 Q. So what did Mr. Holt tell you?

5 A. There was a case pending. Something  
6 had been submitted to the FCC, and it pertained to  
7 the TV tower that, supposedly, I had entered into  
8 negotiations to have placed on top of our  
9 structure.

10 Q. Did he tell you that the application  
11 that was involved was for a low-power television  
12 station? a/c

13 A. I would imagine so. Yes, sir.

14 Q. When you say you would imagine?

15 A. I think he did, sir.

16 Q. Did he tell you that the construction  
17 permit for that station had long since been turned  
18 in to the FCC for cancellation?

19 A. Not in so many words, sir, no.

20 Q. Did you know that until this minute?

21 A. No, I knew that -- Actually, to be  
22 honest, I did not really understand exactly what  
23 was going on. It had something to do with a permit  
24 for construction.

25 After reading Mr. Daly's deposition,

1       which he had made earlier, or Mr. Gardner's, I'm  
2       just not sure which, about a construction permit  
3       which meant nothing to me.

4           Q.       Now, let me ask you again. Were you  
5       aware until this minute that the low-power  
6       construction permit which was the subject of Mr.  
7       Daly's visit to you has long since been turned in  
8       for cancellation to the FCC.

9           A.       It's been turned in for cancellation?  
10       I know nothing about that.

11          Q.       You have never been told that?

12          A.       No. I don't know anything about that.

13          Q.       No one ever told you?

14          A.       Not to my knowledge. No, sir.

15          Q.       And so Mr. Holt told you that there was  
16       a controversy going on, he said? Did you tell me  
17       that?

18          A.       There was something involving a permit  
19       to put this antenna on top of our plant, the  
20       negotiation to put the antenna on top of our plant.

21                 It was something to do with that and  
22       had to do with whether we had negotiated with him  
23       or not.

24                 Other than that, I don't know anything  
25       about it. The parties at that, if mentioned, meant



1 nothing to me.

2 Q. And he asked you -- He told you what  
3 you just said. And then did he ask you some  
4 information?

5 A. Yes, he did.

6 Q. And you answered his questions?

7 A. Yes, sir.

8 Q. And did he tell you he wanted you to  
9 put this -- He wanted to put this in affidavit  
10 form?

11 A. Yes, sir.

12 Q. And do you have -- Do you have your own  
13 corporate counsel, by the way?

14 A. Yes, sir.

15 Q. And has that person or persons been  
16 involved in the preparation of this -- of your  
17 affidavit.

18 A. No, sir.

19 Q. Have you ever consulted other counsel  
20 in connection with this matter?

21 A. No, sir.

22 Q. So you had a conversation with Mr.  
23 Holt, and he asked you questions?

24 A. Yes, sir.

25 Q. And then what developed, am I correct,